

CHAPTER 35
FISH HABITAT PROMOTION FOR COUNTY CONSERVATION BOARDS

571—35.1(483A) Purpose and definitions. The purpose of this chapter is to designate procedures for the allotment of fish habitat revenue to county conservation boards. These funds shall be used specifically to acquire from willing sellers whole or partial interest in land for use as or for protection of fish habitats and to develop and enhance fishable waters and habitat areas. The department shall administer the fish habitat funds for the purposes as stated in the law at both the state and county levels.

The following definitions apply in these rules:

“*Commission*” means the natural resource commission.

“*County*” means a county conservation board.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources.

“*District*” means a county conservation district.

571—35.2(483A) Availability of funds. Fish habitat funds are dependent on sales. Revenues received by the department shall determine the amount of moneys available at any time.

35.2(1) Local share. Funds available for county conservation boards shall be specified in the department’s budget in accordance with legislative appropriations. At least 50 percent of the fish habitat revenue shall be apportioned to county conservation boards.

35.2(2) Distribution. After deduction of 5 percent to be held for contingencies, the remaining local share shall be available on an annual basis. The department shall divide fish habitat funds equally among the districts. The districts shall have two years to obligate fish habitat funds once the funds are made available. After two years, the department shall apportion all unobligated funds equally among the districts.

571—35.3(483A) Program eligibility. All counties are eligible to participate in this program.

571—35.4(483A) Eligibility for cost-sharing assistance. A project shall not be eligible for cost sharing unless the commission specifically approves the project or the applicant has received a written waiver of retroactivity from the director prior to the project’s initiation. A project shall not be eligible for cost sharing unless public fishing is allowed; however, the review and selection committee as described in 35.6(1) may recommend for commission approval projects with restrictions on boating.

35.4(1) Acquisition projects. A licensed appraiser shall appraise lands or rights thereto to be acquired, and the appraisal shall be approved by department staff. The appraisal requirement may be waived when the staff determines that it is impractical for a specific project. The cost share shall not be approved for more than 90 percent of the approved appraised value. Acquisition projects are eligible for cost share either by direct payment as described in subrule 35.11(6) or by reimbursement to counties.

35.4(2) Eligible acquisition activities.

- a. Acquisition for pond and lake construction.
- b. Acquisition of fishable streams, ponds and lakes.
- c. Acquisition for watershed protection.

35.4(3) *Development projects.* Eligible expenditures for development projects shall include, but not be limited to, preliminary expenses; contracts; the purchase of materials and supplies; rentals; and extra labor that is hired only for the specific project. The purchase of equipment is not an eligible expenditure. Donated labor, materials and equipment-use and use of a county's own labor and equipment are not eligible for cost-share assistance. Development projects are limited to lands legally controlled by the county for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the county.

35.4(4) *Enhancement projects.* For purposes of this rule, "enhancement" shall be considered to be synonymous with "development." Eligible enhancement activities include:

- a. Physical placement of fish habitats in ponds, lakes, pits and streams.
- b. Armoring of pond, lake, pit and stream shores.
- c. Construction of aeration systems.
- d. Dredging of ponds or lakes.
- e. Construction of ponds and lakes.
- f. Construction of sediment-retaining basins.
- g. Repair of lake dam/outlets.
- h. Manipulation of fish populations and aquatic vegetation.
- i. Removal of dams.
- j. Construction of fish ladders.
- k. Construction of fish barriers.
- l. Construction of rock-faced jetties.

35.4(5) *Project income.* When, as a result of a purchase agreement or other title transfer action involving cost sharing with fish habitat funds, a county directly or indirectly receives financial income that would have been paid to the previous landowner, 90 percent of that income shall be transferred to the department unless the county has identified and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee shall recommend, and the director and commission shall approve, plans for the expenditure of income received pursuant to this subrule. In the absence of acceptable fish habitat development or acquisition plans, the county shall transfer to the department 90 percent of the income received as it is received. The department shall credit that income to the county's apportionment of the fish habitat fund as described in 35.2(1). The schedule of those reimbursements from a county to the state shall be included in the project agreement.

571—35.5(483A) *Application for assistance.* Applications must contain sufficient detail as to clearly describe the scope of the project and how the area shall be managed.

35.5(1) *Form.* Applications must be submitted on forms provided by the department.

35.5(2) *Time of submission.* Applications for funds shall be reviewed and selected for funding during January of each year. The district designee shall receive an original application and six copies in acceptable form by the close of business on the last business day of November of the previous year for consideration. The district shall forward a copy of all applications to the department's designee by December 15 of the previous year. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of funds. In emergencies, a county may request a waiver so that an acquisition project may be approved for retroactive payments if funds are available and the project meets all other criteria.

35.5(3) *Joint applications.* Joint applications are permitted. One county shall serve as the primary applicant. A joint application shall clearly describe the respective share of project costs for each county named. Any cooperative agreement between the counties named shall be provided as a part of the application.

35.5(4) *County funding.* An applicant shall certify that it has committed its share of project costs and that these funds are available and shall state the means of providing for the county share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action shall be completely documented in the application.

35.5(5) *Multiple development projects.* An application for development project assistance may include development on more than one area if the development is of a like nature.

571—35.6(483A) Project review and selection.

35.6(1) *Review and selection committee.* Each district shall have a review and selection committee, hereinafter referred to as the committee. Each committee shall be composed of at least five county directors or their designees. Each district's committee shall determine which grant applications and amendment requests shall be selected for funding. For advisory purposes only, a department biologist or designee shall be present during review and selection of grant applications and amendment requests.

35.6(2) *Consideration withheld.* The committee shall not consider any application that on the date of the selection session is incomplete or for which additional pertinent information has been requested but not received.

35.6(3) *Application rating system.* The committee shall apply a rating system to each grant application considered for fund assistance. The department shall develop the rating system. The rating system shall be used to rate each application, and those applications receiving the highest ratings shall be selected for fund assistance to the extent of the allotment for each annual period. If the amount of grant moneys available exceeds that requested, applications shall be reviewed only to determine eligibility.

571—35.7(483A) Commission review. The director shall present the committees' recommendations to the commission at its next meeting following the rating of projects for funding. The commission may approve or disapprove funding for any project on the list.

571—35.8(483A) Grant amendments. If funds are available, projects for which grants have been approved may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. The director shall approve project changes prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns shall not be approved if funds have already been committed or the work has already been performed.

571—35.9(483A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. A project for which a grant is approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission.

571—35.10(483A) Project period. A project period that is commensurate with the work to be accomplished shall be assigned to each project. Extensions shall be granted only in case of extenuating circumstances.

571—35.11(483A) Payments.

35.11(1) *Grant amount.* Grant recipients shall be paid 90 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

35.11(2) *Project billings.* Grant recipients shall submit billings for reimbursement or cost sharing on forms provided by the commission.

35.11(3) *Project billing frequency.* Project billings shall be submitted on the following basis:

- a. Up to \$10,000 total project cost—one billing.
- b. Over \$10,000 total project cost—no more than two billings.

35.11(4) *Documentation.* Grant recipients shall provide as required by the department documentation to substantiate all costs incurred on a project.

35.11(5) *Development projects.* Eighty percent of the approved local share may be paid to the county when requested, but not earlier than start-up of the project. The department, pending successful completion and final inspection of the project, shall withhold 20 percent of the local share until any irregularities discovered as a result of a final site inspection have been resolved.

35.11(6) *Acquisition projects.* The department may make payment directly to a property seller pursuant to the following criteria:

- a. The county requests direct payment in the project application and shows good cause for such procedure;
- b. The seller provides to the county a marketable fee simple title, free and clear of all liens and encumbrances or material objections at the time of payment; and
- c. Sufficient program funds are available at the time of transfer.

571—35.12(483A) Record keeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income that normally would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action. A copy of the county's audits showing such income and disbursements for the grant period shall be submitted to the department's budget and grant bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state law.

571—35.13(483A) Penalties. Whenever any real or personal property acquired or developed with fish habitat fund assistance passes from the control of the grantee or is used for other purposes that conflict with the project purpose, it shall be considered an unlawful use of the funds. The department shall notify the county of any such violation.

35.13(1) *Remedy.* Funds thus used unlawfully shall be returned to the department for inclusion in the fish habitat fund, or local, non-cost-shared funds shall be used to acquire a replacement property of equal value at current market prices and with commensurate benefits to fish. The replacement property must be approved by the commission. The county shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this subrule are in addition to others provided by law.

35.13(2) *Land disposal.* Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with fish habitat fund assistance is no longer of value for the project purpose or that the county has other good cause, the commission may authorize that the land be disposed of and the proceeds thereof used to acquire or develop an area of equal value or that 90 percent of the proceeds be returned to the state for inclusion in the fish habitat fund.

35.13(3) *Ineligibility.* If the department determines that a county has unlawfully used fish habitat funds, the county shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

These rules are intended to implement Iowa Code Supplement section 483A.3A.

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